



## Hybid Farm and Acton Conservation Commission

### **2016 LICENSE AGREEMENT**

This Agreement, made this 16<sup>th</sup> day of December, 2015, is by and between the Town of Acton, a municipal corporation in Middlesex County, Massachusetts, acting by its Conservation Commission (hereinafter "the Commission") and Thomas B. McConnon, Rita-Marie McConnon and Hybid Farm, Inc. (hereinafter "the Licensees") (collectively, the "Parties").

WHEREAS, on October 9, 1979, a Special Town Meeting voted to authorize the Town to purchase land on Nagog Hill Road owned by Thomas J. Quin, Jr. and Wilda M. Quin (hereinafter "Nagog Hill"). The Quins deeded Nagog Hill to the Town by deed dated January 2, 1980 and recorded at Middlesex South Registry of Deed Book 13871, Page 233.

WHEREAS, the Licensees desire to continue their use of a portion of Nagog Hill, which has been permitted in the past pursuant to a License Agreement between the Commission and the McConnons signed on July 19, 1989.

WHEREAS, the Licensees are hereby given the privilege and license to continue to use a portion of Nagog Hill (hereinafter "the Licensed Premises") solely for the purposes and subject to the limitations stated in this Agreement.

WHEREAS, although allowing the Licensees to conduct the agricultural activities described below, it is the intent of the Commission that this Agreement be interpreted and administered in such a manner as to protect and enhance the wetlands, water quality, wildlife, and natural areas of the licensed premises and to provide safe public access.

NOW THEREFORE, the Parties agree to the following:

#### **1. Description of Licensed Premises**

1.1. The Licensed Premises are comprised of the twelve and one half acres, more or less, , bounded by a yellow line and marked A, B, C and D on the aerial photograph in **Attachment 1**.

#### **2. Allowed Uses**

2.1. The Licensed Premises may be used by the Licensees solely for the purpose

of grazing, training and riding horses, providing riding lessons, trail rides, and other similar activities, including, but not limited to, Pony Club training and birthday parties. These activities are subject to the conditions and limitations stated in this Agreement.

2.2. The Parties agree that a vegetative ground cover shall be established and, where necessary, re-established, and maintained at all times by the Licensees on areas A, B and C of the Licensed Premises.

2.3. Licensees agree that Area B will remain unfenced and will be used for lower intensity activities than other Areas.

2.4. Licensees agree that Area D will be maintained in its current state, until the parties agree on a vegetative cover plan.

### **3. Limitations on Use**

3.1. If the Commission determines in its sole reasonable discretion that the vegetative ground cover in Areas A, B or C is significantly diminished or destroyed such that significant portions of these areas constitute bare dirt, it shall provide Licensees with notice to cease all activities on those areas until the Commission has determined that a healthy vegetative ground cover has been restored on such areas of concern.

3.2. No trees or shrubs shall be removed from the Licensed Premises without the consent of the Commission. Licensees agree not to use or apply any herbicide, insecticide, pesticide, or fertilizer without the prior written consent of the Commission.

### **4. Public Access**

4.1. The Licensees shall provide and maintain in good working order: (1) gates to Areas A, B, C and D; and (2) signs notifying the public of its right of access to the licensed premises. The locations of the gates and signs shall be as shown in **Attachment 2** and the text on the signs and their size shall be as shown in **Attachment 3**.

4.2. The Licensees shall permit the public to traverse the Licensed Premises unimpeded for passive recreation or any other purposes allowed and at the times permitted under the Commission's Rules and Regulations for Acton conservation lands.

4.3. The licensees agree to grant the public the right to cross their property through the gate from the road to Area A and through the gate between Area A and Area C.

4.4. The Licensees, by accepting this condition, do not waive any remedies that they may have against any member of the public who may damage property of the Licensees.

4.5. The Commission and its agents and employees shall have unrestricted access to the Licensed Premises at all times.

## **5. Fees**

5.1. Upon each renewal of this License Agreement, Licensees shall pay an annual license fee of \$1,000 for use of the Licensed Premises to the Town of Acton by January 15th of each year, commencing on January 15, 2013.

## **6. Commitment to Maintain Licensed Premises in Good Repair**

6.1. The Licensees agree to use reasonable best efforts to maintain in good repair, at all times, all structures, fences and signs allowed and required by this Agreement.

## **7. Size of Herd**

7.1. The number of horses using the Licensed Premises shall not exceed 32 horses at any one time.

7.2. The Licensees shall provide to the Commission quarterly by email a list of the horses currently at Hybrid Farm. The list will specify any horses that have been added or are no longer at Hybrid Farm since the last list.

## **8. Default**

8.1. Failure of the Licensees to comply with any material term of this License, which failure is not cured within 30 days of receipt of written notice thereof from the Commission, may result in the termination of this License pursuant to ¶13 below.

## **9. Actions Required by the Licensees**

9.1. Filing Site Plan. The Licensees shall file an updated plan with the Commission when requesting a license renewal if there have been changes in the location of any fences, gates, or shelters since the previous renewal request. Upon written approval from the Commission, the Licensees may construct such fences, signs, and shelters; provided however, that in no event shall the walls of any shelter be constructed of plain plywood.

9.2. Restoration of Site at Termination. At the termination of this License, either by non-renewal or pursuant to Section 13 herein, the Licensees agree to remove and dispose of all fences and structures on the Licensed Premises, and restore the Licensed Premises to their pre-license condition or to such reasonable condition as is determined by the Commission at the termination of this Agreement. The Licensees shall complete such restoration within thirty (30) days of termination of this License. Licensees are permitted to enter Licensed Premises after the termination of the License during that thirty (30) day period only to fulfill their obligations under this Section. 5.

9.3. Posting Surety Bond. Not later than December 1, 2012, the Licensees shall file with the Commission a surety bond in the amount of \$10,000 and in a form approved by Town Counsel to adequately cover the costs of removing and disposing of all fences and structures on the Licensed Premises, and restoring the Licensed Premises to their pre-license condition or to such reasonable condition

as is determined by the Commission at the termination of this Agreement in the event of failure by the Licensees to do the same as required pursuant to Section 9.3 herein. The surety bond shall be renewed and maintained during each subsequent license period. The current surety bond is at **Attachment 4**.

9.4. Use of Crossing from Area D into Areas B and C. Use of the crossing from Area D to Areas B and C is prohibited, except that the trail from Area D to Area B as shown in Attachment 2 and marked on the ground with stakes may be used occasionally to move not more than three (3) horses at a time. If the Commission determines, in its sole reasonable discretion, that the natural condition of the trail has been significantly degraded due to the passage of horses along that trail, it will provide the Licensees with notice to cease use of the trail until the Commission has determined that the trail has recovered sufficiently to allow it to be used in accordance with this provision. Licensee agrees to install and maintain the stakes.

9.5. Other Permits or Approvals. The Licensees shall obtain all other permits or approvals required by federal, state or local bylaws and regulations.

## **10. Renewal**

10.1. This License Agreement may be renewed for subsequent one year periods beginning January 15, 2013, by writing between the Commission and the Licensees. The Licensees shall apply for such renewal by October 1 of each year. The renewal application shall include documentation of the surety bond required by Section 9.3 and the insurance required by Section 12.1 for the upcoming license period. This License Agreement shall automatically renew for a successive one year period if the Commission does not respond to the Licensees' application by the December 1 immediately following Licensees' most recent application.

10.2. Before any renewal of this Agreement is granted, the Parties agree to use reasonable best efforts to agree to (1) changes, if any, that should be made in the vegetative cover in Area D; and (2) how to control runoff and prevent adverse impacts on any areas subject to jurisdiction under the Wetlands Protection Act/Acton Wetland By-law or water quality from activities on the Licensed Premises.

## **11. Indemnity**

11.1. The Licensees acknowledge and agree that the Licensees are responsible, jointly and severally, for all duties and responsibilities under this License Agreement, for all proceedings and claims arising out of the rights and privileges conferred by this agreement, and for all the acts of their employees and agents hereunder, and agree that they will indemnify and hold the Town of Acton and its officers, boards, committees and employees harmless from any and all losses, damages, costs, charges, expenses and claims which may be made against it or them or to which it, they or any of them may be subject by reason of any alleged act, action, neglect, omission or default on the part of the Licensees or any of their agents or employees any way arising out of this license agreement except to

the extent caused by the Town of Acton's neglect, omission or default.

## **12. Insurance**

12.1. Before executing this License Agreement, the Licensees shall purchase and maintain at their expense for the duration of this agreement a policy of insurance providing for public liability and property damage insurance covering liability for itself, its employees and agents under this agreement, which provides indemnity protection to the amount or limit of at least \$1,000,000 on account of injury to or death of any one person, of at least \$1,000,000 on account of any one accident resulting in injury or death of more than one person, as well as coverage for property damage to the amount or limit of at least \$ 1,000,000 on account of any one accident resulting in such property damage; and the Licensees shall, before execution of this Agreement secure and file with the Commission a certificate of such insurance in a form approved by the Town with a surety company or companies authorized to do business in the Commonwealth of Massachusetts and approved by the Commission. Each such certificate shall state that the Town will be notified in writing no less than (15) days prior to cancellation of any such insurance coverage. A copy of the current insurance certificate is **Attachment 5**.

## **13. Termination**

13.1. The Licensees agree that if the Commission, in its sole reasonable discretion, determines at any time during the term of this agreement that the Licensees are using any or all of the premises in material violation of the terms and conditions of this agreement, the Commission may, in its sole discretion, at any time thereafter (subject to a 30-day right to cure by Licensees) terminate all or part of this Agreement, by giving written notice thereof to the Licensees, specifying the effective date of such notice, and thereupon, upon the date so specified, this license shall terminate, but such termination shall not prejudice or waive any rights or remedies which the Town of Acton or the Commission may have against the Licensees, jointly and severally, because of any default or failure to observe and comply with the terms and conditions of this Agreement up to the date of such termination.

## **14. Assignment**

14.1. The Licensees shall not assign or transfer by power of attorney, or otherwise, the right and privilege conferred upon it by this license, or any portion thereof, without the previous written consent of the Commission, nor shall any such rights or privilege be subject to or otherwise reached by any legal or equitable process.

## **15. Notice**

15.1. Any notice, demand or request required to be given hereunder shall be deemed sufficiently given or served on either of the parties hereto either by hand-delivery or mailed by certified mail, return receipt requested, postage

prepaid, to the Commission at Town Hall, Massachusetts, and to the Licensees Thomas B. and Rita-Marie McConnon, 217 Nagog Hill Road, Acton, Massachusetts, 01720.

**16. Events Beyond the Control of the Parties**

16.1. In the event the operations of the Commission or Licensees' facilities (or any substantial portion thereof) are interrupted by war, acts of terrorism, fire, insurrection, riots, the elements, earthquakes, or acts of God, the provisions of this License (or such portions thereof as the party is thereby rendered incapable of performing) will be suspended for the duration of such interruption.

AS AGREED

BY ACTON CONSERVATION COMMISSION CHAIRMAN:

Terrence Maitland

Terrence Maitland

Date: Dec. 16, 2015

BY RITA-MARIE MCCONNON, individually and as President of Hybrid Farm, Inc.:

\_\_\_\_\_  
Date: \_\_\_\_\_, 2015

BY THOMAS B. MCCONNON, as Treasurer of Hybrid Farm, Inc.:

\_\_\_\_\_  
Date: \_\_\_\_\_, 2015

**Attachments**

1. Aerial photograph of the licensed premises indicating Areas A, B, C, and D
2. Plan of licensed premises showing location of gates, signs, shelters, and the staked trail from Area D to Area B
3. Current surety bond
5. Current liability insurance certificate

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Terrence Maitland

Date: \_\_\_\_\_, 2015

BY RITA-MARIE MCCONNON, individually and as President of Hybrid Farm, Inc.:

  
\_\_\_\_\_

Date: dec. 16., 2015

BY THOMAS B. MCCONNON, as Treasurer of Hybrid Farm, Inc.:

\_\_\_\_\_  
Date: \_\_\_\_\_, 2015

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Date: \_\_\_\_\_, 2015

BY RITA-MARIE MCCONNON, individually and as President of Hybrid Farm, Inc.:

\_\_\_\_\_  
Date: \_\_\_\_\_, 2015

BY THOMAS B. MCCONNON, as Treasurer of Hybrid Farm, Inc.:



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Date: 12/16/2015, 2015

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## Attachment 1





Scale 1:2,400  
1 inch = 200 feet

0 100 200 Feet

Basemap: 2008 Orthophotography, MassGIS



CONSERVATION COMMISSION  
Hybrid Farm, Acton

Site Map 2016

**Bettina Abe**

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**From:** ritamccannon@gmail.com on behalf of Rita-Marie McConnon [rita@hybidfarm.com]  
**Sent:** Friday, December 11, 2015 11:19 AM  
**To:** Bettina Abe  
**Subject:** Licence renewal  
**Attachments:** Bond.pdf

Dear Bettina,

Thank you to the commission for allowing me to be absent at the meeting on Dec 16th. Attached is the bond that is current until Jan 15, 2016 and a copy of my check for the renewal that will be mailed today. A copy of the new bond will be sent when I receive it.

The gate hinge that was in need of repair, as I reported on the site walk, has been repaired.

I will be delivering the land usage fee a month before it is due to your office.

I am requesting no changes or additions to the license agreement and there are no changes or additions to the site map.

I will send the list of horses residing at Hybid Farm, Inc. due on Jan 1, 2016 by Dec.31, 2015 and will continue to report every quarter.

Thank you to the commission for all they continue to do to make this long standing agreement between Hybid Farm, Inc. and the town of Acton to work well together.

Wishing you all a wonderful holiday season and Happy New Year.

Sincerely,

Rita-Marie McConnon  
217 Nagog Hill Road  
Acton, Ma 01720  
978-760-0567

# TOWN OF ACTON

## SCHEDULE OF DEPARTMENTAL PAYMENTS TO TREASURER

DEPT. CONSERVATION

DATE 12-28-15

NO. 550

FROM:	SOURCE	ACCOUNT #	A/R CODE	AMOUNT	TOTAL
	Filing Fees	3602-437007	360201		
	Camp Acton	3750-432016	375003		
	New Trail Guides Conservation Maps	01550-437007	015503		
	Sale of Copies	01550-437004	155002		
Bettina Abe	Land Lease	01550 437007	0155002	1000 <sup>-</sup>	1000 <sup>-</sup> ch

DATE 12-28-15

NO. \_\_\_\_\_

TO THE DEPARTMENTAL OFFICER MAKING THE PAYMENT

RECEIVED OF Bettina Abe THE SUM OF

One thousand + 4x/100 DOLLARS

FOR THE PERIOD ENDING December 2015 FOR COLLECTIONS AS

PER SCHEDULE OF THIS DATE, FILED IN MY OFFICE

Susan H. Perie